

## Circular to Creditors

21 June 2023

### A C H CONTRACTORS PTY LTD (in Liquidation) ACN 618 344 595 (the Company)

I refer to my appointment as Liquidator of the Company on 25 February 2020.

You have been sent this circular because you are listed as a creditor of the Company.

This circular provides an update on the status and conduct of the liquidation to date and seeks creditors' approval for additional remuneration incurred. My Remuneration Request Report, enclosed, forms part of this circular and provides details of specific tasks undertaken in the liquidation.

## 1 Liquidation update

### 1.1 Director's loan account

Since my last report to creditors dated 17 September 2020, I successfully applied to the Albany Magistrates Court for a judgement debt against the Director in relation to his loan account owed to the Company. The judgement debt was awarded by the Court on 19 August 2021 in the amount of \$69,520 (**Judgement Debt**).

I have obtained a Property Sale and Seizure Order (**PSSO**) in respect of the Judgement Debt. The PSSO authorises the Sheriff of Western Australia and the Bailiff delegate in Albany to seize and sell the saleable interest in property of the Director to satisfy the Judgement Debt. The PSSO has been lodged with Landgate in respect of encumbered land owned by the Director.

The Bailiff delegate is in the process of recovering a number of vehicles and selling them at auction. The proceeds, net of recovery costs, will be forwarded to the Company. If a shortfall relative to the Judgement Debt remains, a process can be pursued whereby the encumbered land is also auctioned.

The recovery process utilising the PSSO has been a lengthy one due to: a) time needed for the Sheriff to deal with an earlier PSSO, b) pursue the removal of a caveat on the encumbered land, and c) deal with oppositions raised by the Director during the process.

### 1.2 Insolvent trading

As detailed in my previous report to creditors, I identified a potential insolvent trading claim against the Director of the Company. I initially assessed the Company to be likely insolvent from April 2018 onwards, however, after further analysis of the information available, I concluded that the date of insolvency was more likely to be on or around 24 October 2019. Factors supporting this conclusion include the sending of emails to suppliers on that date advising them of the Company's financial difficulty and requesting that action for non-payment not be taken for at least 30 days.

Using that date, I reassessed the insolvent trading claim to be \$141k. I have written to the Director demanding payment of the insolvent trading damages but have not received a response.

I view the insolvent trading claim against the Director as being strong and it appears that he has sufficient assets to pay it. I note, however, that the Company does not have any assets to prosecute the claim. Insolvent trading legal actions are complex and litigation carries risk that cannot be fully managed. The cost of pursuing the claim to an outcome at trial would also easily exceed the claim's

value. Despite these challenges, if a creditor of the Company has interest in funding an insolvent trading action, they should contact my office to discuss this strategy. I request that this be done no later than 30 June 2023. If I do not hear from a creditor by then, I will conclude that there is no interest in doing so.

### 1.3 Unfair preference payments

As previously advised, I identified an unfair preference received by the Australian Taxation Office (**ATO**) in the sum of \$6,000. This amount was recovered in full on 2 November 2020.

### 1.4 Other activities

My other activities since my last report include ongoing investigations into potential preference payments to creditors other than ATO, investigating other potential breaches of director's duties and attending to administrative matters.

## 2 Receipts and payments

A summary of receipts and payments in the liquidation to date is attached at **Annexure A**.

## 3 Investigations

Please refer to section 1 of this report.

I am required to report the findings of my investigations in a report to the Australian Securities and Investments Commission (**ASIC**), pursuant to section 533 of the Corporations Act 2001 (Cth) (**the Act**). Liquidators' reports to ASIC are not publicly available.

## 4 Likelihood of creditors receiving a dividend

I do not expect a dividend to be paid to any class of creditor.

## 5 Proposal without meeting

Recent changes in insolvency legislation enable a liquidator to put a proposal to creditors without calling a meeting. This mechanism improves the efficiency of the winding up process as it avoids the time and expense of holding a creditors' meeting in order to consider resolutions such as the proposal enclosed.

I enclose with this letter the following documents in relation to the remuneration proposal:

Document	Description
Remuneration Approval Report	To cover the Liquidator's costs in relation to completing the winding up of the Company, for the period 2 September 2020 to finalisation, in the amount of \$83,007 plus GST.
Notice of Proposal to Creditors	This form contains the details of the proposal to creditors relating to the Liquidator's remuneration for the period 2 September 2020 to finalisation, in the sum of \$83,007 plus GST.
Informal Proof of Debt for Voting Purposes	This form is used to document a creditor's claim and must be provided in order to vote on the proposal. If you have previously returned this form, there is no requirement to complete it again unless the amounts owed have changed.

Please return your vote on the proposal by completing the proposal documents and returning them to my office by no later than 5pm on Thursday, 13 July 2023.

## 6 Where can you get more information?

You can access information which may assist you on the following websites:

- ASIC at <http://www.asic.gov.au/> (search for “insolvency information sheets”)
- ARITA at [www.arita.com.au/creditors](http://www.arita.com.au/creditors)

Otherwise, please contact Eve King of my office on 08 6145 0700 or [eking@aviorconsulting.com.au](mailto:eking@aviorconsulting.com.au) should you require further information.

Yours faithfully  
**For the Company**



**Dermott McVeigh**  
Liquidator

Encl.

**A C H Contractors Pty Ltd (in Liquidation)**  
**Receipts and Payments**

**For the period:**  
**25 February 2020 to 20 June 2023**

<b>Description</b>	<b>Amount (\$)</b>
<b>Opening Cash</b>	<b>5,405</b>
<b>Sale Income - Plant &amp; Equipment</b>	
Sale of plant & equipment	182,969
<b>Care, Preservation &amp; Realisation Costs</b>	
Insurance	(6,008)
Valuer fees	(4,015)
Transport fees	(2,064)
Process server location and recovery fees	(931)
<b>Net sale proceeds</b>	<b>169,951</b>
<b>Rental Income</b>	
Plant & equipment	20,794
<b>Rental costs</b>	
Finance charges	(10,496)
Wages & superannuation - post appointment	(1,954)
<b>Net rental proceeds</b>	<b>8,345</b>
<b>Other Receipts</b>	
Pre-appointment debtors	26,115
ATO 'Cash Flow Boost'	17,262
GST received	9,426
Legal recoveries	6,129
Unfair preference recovery	6,000
Other receipts	1,558
<b>Total other receipts</b>	<b>66,490</b>
<b>Total receipts</b>	<b>244,785</b>
<b>Payments</b>	
Liquidator fees	189,190
Legal fees	35,545
Other professional fees	11,000
GST paid	4,606
Liquidator disbursements	2,685
Bank charges	3
<b>Total payments</b>	<b>243,028</b>
<b>Cash at bank as at 20 June 2023</b>	<b>7,162</b>

Schedule 2 to the Corporations Act 2001, Section 70-50  
Insolvency Practice Rules (Corporations) 2016, Section 70-45

**A C H CONTRACTORS PTY LTD (In Liquidation)**  
**ACN 618 344 595 (the Company)**

## Remuneration Approval Report

### 1 Declaration

I, Dermott McVeigh of Avior Consulting, have undertaken a proper assessment of this remuneration claim for my appointment as Liquidator of the Company in accordance with the Corporations Act 2001 (Cth) (**the Act**) and applicable professional standards.

I am satisfied that the remuneration claimed is in respect of necessary work, properly performed, or to be properly performed, in the conduct of the liquidation.

### 2 Executive summary

This Remuneration approval request report forms part of and should be read in conjunction with my report to creditors dated 21 June 2023 (**Creditors Report**).

To date, the total remuneration that has been approved in the liquidation is \$174,951 (ex GST). This amount has been exhausted. Accordingly, this remuneration report details approval for the fees set out below. If assets of the Company are not sufficient to pay the approved fees, then any shortfall will remain unpaid.

Period	Report Reference	Amount (ex GST)
Resolution 1: 2 September 2020 to finalisation	4.1	\$83,007
<b>Total</b>		<b>\$83,007</b>

Please refer to Part 4 for full details of the calculation and composition of the remuneration approval sought.

### 3 Statement on remuneration

#### 3.1 Remuneration methods

There are four basic methods that can be used to calculate the remuneration charged by an insolvency practitioner as follow:

##### 3.1.1 Time Based (hourly rates)

This is the most common method. The total fee charged is calculated by reference to the hourly or time unit rate charged for each person who carries out the work multiplied by the number of hours spent by each person on necessary work properly performed.

##### 3.1.2 Fixed fee

The total fee charged is normally quoted at the commencement of the liquidation and is the total cost for the liquidation. Sometimes, a practitioner will finalise the liquidation for a fixed fee.

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ABN 34 799 701 147

### 3.1.3 Percentage

The total fee charged is based on a percentage of a particular variable such as the gross proceeds of asset realisations.

### 3.1.4 Contingency

The insolvency practitioner's fee is contingent on achieving a particular outcome.

## 3.2 Remuneration method chosen

Given the nature of this liquidation, I propose that the remuneration of the Liquidator be calculated using the time-based method. Time based remuneration is appropriate in this liquidation given:

- It ensures actual time is billed at an hourly rate applicable to staff experience;
- It ensures that remuneration claimed is only for necessary work properly performed in the liquidation; and
- It covers tasks required to be undertaken in the liquidation which not only relate to asset realisations but also to reporting requirements and other tasks of an administrative or statutory nature.

## 3.3 Explanation of hourly rate

The hourly rates for my remuneration calculation are set out in the following table together with a general guide showing the qualifications and experience of staff engaged in the liquidation and the role they take. The hourly rates encompass the total cost of providing professional services and should not be compared to an hourly wage.

### Schedule of Hourly Rates & General Guide to Staff Experience:

Title	Rate (\$)	Experience
Partner / Appointee	600	The Partner/Appointee is a registered liquidator and member of CAANZ or equivalent and may be a member of the ARITA, bringing specialist skills to the administration or insolvency task.
Senior Manager	475	Generally, more than 7 years' experience with at least 2 years as a Manager. University degree; member of the CAANZ or equivalent and, generally, the ARITA; very strong knowledge of relevant insolvency legislation and issues.
Manager	400	4-7 years' experience with well-developed technical and commercial skills. University degree; member of CAANZ and, generally, the ARITA; strong knowledge of relevant insolvency legislation and issues. Controls 2-4 staff.
Senior Analyst	330	Generally, 2-4 years' chartered accounting or insolvency management experience. University degree; completing the CAANZ's CA program. Good knowledge of basic insolvency legislation and issues.
Analyst	220	Generally, 2-3 years' chartered accounting or insolvency management experience. University degree, CAANZ's CA program commenced.
Graduate Analyst	180	Junior staff member who has completed a university degree with less than one year's experience working on insolvency matters. Works under supervision of more senior staff in performing day to day tasks.
Personal Assistant/ Administration	180	Appropriate skills, including books and records management and accounts processing particular to the administration.

#### Notes:

- The hourly rates are exclusive of GST.
- The guide to staff experience is intended only as a general guide to the qualifications and experience of staff engaged in the liquidation. Staff may be engaged under a classification considered appropriate for their experience.
- Time is recorded and charged in six-minute increments.
- Creditor approval will be sought prior to the application of any new rates to this liquidation.

## 4 Description of work

### 4.1 Resolution 1

**Period:** 2 September 2020 to Finalisation

Task area	General description	Includes
<b>Assets</b> 20.8 hours \$9,495 (ex GST)	General	<ul style="list-style-type: none"> <li>Documenting asset investigations and realisations</li> <li>Assessing assets and their recovery</li> </ul>
	Debtors	<ul style="list-style-type: none"> <li>Reviewing and assessing debtors' ledgers</li> <li>Correspondence with debtors regarding balances outstanding</li> <li>Correspondence with debtors requesting and obtaining information regarding potential counterclaims</li> <li>Reviewing documents provided by debtors</li> <li>Preparing and lodging proof of debt in the liquidation of a debtor</li> <li>Preparing first and second demand letters to the Director in relation to the Director's loan account</li> <li>Liaising with legal representatives and preparing and lodging Court application for judgement debt against the Director</li> <li>Applying for and receiving Property Sale and Seizure Order (<b>PSSO</b>) from the Magistrate's Court of Western Australia</li> <li>Arranging lodgement of the PSSO at Landgate</li> </ul>
<b>Creditors</b> 48.7 hours \$21,634 (ex GST)	Creditors' enquiries	<ul style="list-style-type: none"> <li>Receiving and following up creditor enquiries</li> <li>Filing creditor enquiries</li> <li>Updating contact information of creditors</li> </ul>
	Creditor reports/proposals	<ul style="list-style-type: none"> <li>Preparing reports to creditors</li> <li>Sending out reports to creditors by email and by post</li> <li>Managing and attending to proposal responses and preparing related ASIC lodgements</li> <li>Responding to queries and questions</li> <li>Preparing remuneration report</li> </ul>
<b>Investigation</b> 76.7 hours \$38,139 (ex GST)	Conducting investigations	<ul style="list-style-type: none"> <li>Conducting investigations into insolvent trading, breaches of director's duties and other reportable offences</li> </ul>
	Report to ASIC	<ul style="list-style-type: none"> <li>Preparing and lodging report to ASIC outlining findings from investigations</li> <li>Receiving and reviewing ASIC response to report</li> </ul>
	Insolvent trading, voidable transactions and other investigation	<ul style="list-style-type: none"> <li>Preparation of investigation file</li> <li>Identifying and analysing potential voidable transactions and assessing their recovery</li> <li>Investigations into the date of insolvency</li> <li>Insolvent trading analysis</li> <li>Considering existence of a potential shadow director</li> <li>Considering insolvent trading claim against the Director</li> </ul>

Task area	General description	Includes
<b>Investigation (continued)</b>	Insolvent trading, voidable transactions and other investigation (continued)	<ul style="list-style-type: none"> <li>Preparing insolvent trading demand letter to the Director</li> <li>Liaising with legal representatives regarding insolvent trading claim</li> <li>Pursuing identified voidable transaction/s between the Company and the ATO</li> <li>Liaising with the ATO regarding settlement of the unfair preference claim</li> </ul>
	ASIC forms	<ul style="list-style-type: none"> <li>Preparing and lodging statutory forms</li> </ul>
<b>Administration 38.0 hours \$13,740 (ex GST)</b>	ATO and other statutory reporting	<ul style="list-style-type: none"> <li>Attending to regular statutory lodgements with the ATO</li> </ul>
	Bank account administration	<ul style="list-style-type: none"> <li>Receipting funds</li> <li>Preparing payments</li> <li>Bank account reconciliations</li> </ul>
	Planning / Review	<ul style="list-style-type: none"> <li>File and engagement status review</li> <li>Discussions regarding status of administration</li> </ul>
<b>Total: \$83,007</b>		

## 4.2 Calculation of remuneration for resolution 1

Resolution 1: 2 Sep 2020 to Finalisation		Hourly	Assets		Creditors		Investigation		Administration		Total	
Employee	Position	Rate \$	Hours	Cost \$	Hours	Cost \$	Hours	Cost \$	Hours	Cost \$	Hours	Cost \$
Dermott McVeigh	Appointee	600	0.6	360	-	-	0.6	360	0.9	540	2.1	1,260
Kelly Meyn	Partner	600	7.3	4,380	7.9	4,740	40.5	24,300	1.1	660	56.8	34,080
Eve King	Senior Manager	475	2.9	1,378	24.5	11,638	10.3	4,893	4.2	1,995	41.9	19,903
Miriam Schmidt	Manager	400	1.1	440	2.8	1,120	3.6	1,440	12.4	4,960	19.9	7,960
Miriam Schmidt	Senior Analyst	330	1.1	363	7.3	2,409	9.3	3,069	3.1	1,023	20.8	6,864
Terrence Chong	Senior Analyst	330	7.8	2,574	3.3	1,089	12.3	4,059	10.4	3,432	33.8	11,154
Benjamin Moody	Analyst	220	-	-	2.9	638	-	-	1.7	374	4.6	1,012
Rahul Saini	Graduate Analyst	180	-	-	-	-	-	-	2.5	450	2.5	450
Arlene Rivera	Administrative assistant	180	-	-	-	-	0.1	18	1.7	306	1.8	324
<b>Grand Total</b>			<b>20.8</b>	<b>9,495</b>	<b>48.7</b>	<b>21,634</b>	<b>76.7</b>	<b>38,139</b>	<b>38.0</b>	<b>13,740</b>	<b>184.2</b>	<b>83,007</b>

## 5 Remuneration recoverable from external sources

The Liquidator is entitled to receive funding from external sources in respect of remuneration.

The Liquidator has received funding from the Attorney-General's Department in respect of work conducted to assist the Commonwealth in administering the Fair Entitlements Guarantee Act 2012 in relation to former employees of the Company.

The Liquidator may also receive funding from ASIC.

## 6 Disbursements

Disbursements are divided into three types:

- **Externally provided professional services** - these are recovered at cost. An example is legal fees.
- **Externally provided non-professional costs** - these are recovered at cost such as travel, accommodation and search fees.
- **Internal disbursements** - such as photocopying, printing and postage are not charged for.



## 7 Queries

If you require further information in respect of the above, or have other questions, please contact Eve King of this office on 08 6145 0700, or via email at [eking@aviorconsulting.com.au](mailto:eking@aviorconsulting.com.au).

An information sheet concerning approval of remuneration in external administrations can also be obtained from the Australian Securities & Investments Commission website at [www.asic.gov.au](http://www.asic.gov.au).

Dated this 21 June 2023



**Dermott McVeigh**  
Liquidator



## Notice of Proposal to Creditors

*Corporations Act 2001  
Insolvency Practice Rules (Corporations) 2016 Division 75-130*

**A C H Contractors Pty Ltd (In Liquidation)  
ACN 618 344 595 (the Company)**

### Proposal 1 for creditor approval – Liquidator’s remuneration

That the remuneration of the Liquidator for the period from 2 September 2020 to finalisation be fixed in the sum equal to the cost of time spent by the Liquidator and his staff, calculated at the hourly rates as detailed in the Remuneration Approval Report dated 21 June 2023, in the amount of \$83,007, plus any applicable GST, and may be paid.

### Reasons for the proposal and the likely impact on creditors if passed

The proposal is a request to creditors to approve the Liquidator’s remuneration for tasks already completed. If the remuneration is approved, the Liquidator will draw these funds from the funds available in the liquidation. This will reduce the dividend payable (if any) to creditors of the Company. Failure to approve the Liquidator’s remuneration via this proposal will result in a meeting of creditors being called to seek the remuneration approval. This will result in additional time and costs being incurred in the liquidation, for which further remuneration will be sought by the Liquidator.

### Vote on proposal

Creditors have the option of approving, not approving or objecting to the proposal being resolved without a meeting of creditors. Please select the appropriate Yes, No or Object box referred to below:

- |        |                          |  |
|--------|--------------------------|--|
| Yes    | <input type="checkbox"/> | I approve the proposal   |
| No     | <input type="checkbox"/> | I do not approve the proposal  |
| Object | <input type="checkbox"/> | I object to the proposal being resolved without a meeting of creditors |

Your claim against the Company must be admitted for the purposes of voting by the Liquidator for your vote to count. Please select the option that applies:

- I have previously submitted a Proof of Debt and supporting documents
- I have enclosed a Proof of Debt and supporting documents with this form

### Creditor details

Name of creditor: \_\_\_\_\_ ACN/ABN: \_\_\_\_\_

- I am not a related party creditor of the Company
- I am a related party creditor of the Company, relationship: \_\_\_\_\_

Address: \_\_\_\_\_

Name of authorised person: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Please complete this document and return with any supporting documents by no later than Thursday, 13 July 2023 for your vote to be counted**, to [eking@aviorconsulting.com.au](mailto:eking@aviorconsulting.com.au) or c/- Avior Consulting, Suite 2 Level 2, 1160 Hay St, WEST PERTH WA 6005.

**INFORMAL PROOF OF DEBT FORM**

*Corporations Act 2001  
Insolvency Practice Rules (Corporations) 2016*

*Regulation 5.6.47  
Section 75-130*

**A C H CONTRACTORS PTY LTD (in Liquidation)  
ACN 618 344 595 (the Company)**

Name of creditor: .....

Address of creditor: .....

ABN of creditor: .....

Amount of debt claimed (see note): \$ .....

Amount of GST included: \$ .....

Consideration for debt: .....

Whether debt secured or unsecured: .....

If secured, give details of security including dates, etc.

Balance, if any, after deducting value of security (see note):

.....  
Creditor  
(or person authorised by creditor)

.....  
Date

**Note:**

Under the Insolvency Practice Rules (Corporations) 2016, a creditor's vote on a proposal without meeting is not entitled to be counted unless (ss 75-130):

- a. The creditor has submitted particulars of his debt or claim on or before the creditors replies to the notice of proposal; and
- b. the Liquidator has admitted the proof of debt or claim, including the amount, for the purposes of voting

I elect to receive all future correspondence from the Liquidator by electronic means to the following email address: \_\_\_\_\_

## Information sheet: Proposals without meetings

You may be a creditor in a liquidation, voluntary administration or deed of company arrangement (collectively referred to as an external administration).

You have been asked by the liquidator, voluntary administrator or deed administrator (collectively referred to as an external administrator) to consider passing a proposal without a meeting.

This information sheet is to assist you with understanding what a proposal without a meeting is and what your rights as a creditor are.

### What is a proposal without a meeting?

Meetings of creditors were previously the only way that external administrators could obtain the views of the body of creditors. However, meetings can be very expensive to hold.

A proposal without a meeting is a cost effective way for the external administrator to obtain the consent of creditors to a particular course of action.

### What types of proposals can be put to creditors?

The external administrator is able to put a range of proposals to creditors by giving notice in writing to the creditors. There is a restriction under the law that each notice can only contain a single proposal. However, the external administrator can send more than one notice at any single time.

### What information must the notice contain?

The notice must:

- include a statement of the reasons for the proposal and the likely impact it will have on creditors if it is passed
- invite the creditor to either:
  - vote yes or no to the proposal, or
  - object to the proposal being resolved without a meeting, and
- specify a period of at least 15 business days for replies to be received by the external administrator.

If you wish to vote or object, you will also need to lodge a Proof of Debt (POD) to substantiate your claim in the external administration. The external administrator will provide you with a POD to complete. You should ensure that you also provide documentation to support your claim.

If you have already lodged a POD in this external administration, you do not need to lodge another one.

The external administrator must also provide you with enough information for you to be able to make an informed decision on how to cast your vote on the proposal. With some types of proposals, the law or ARITA's Code of Professional Practice sets requirements for the information that you must be provided.

For example, if the external administrator is asking you to approve remuneration, you will be provided with a Remuneration Approval Report, which will provide you with detailed information about how the external administrator's remuneration for undertaking the external administration has been calculated.

### What are your options if you are asked to vote on a proposal without a meeting?

You can choose to vote yes, no or object to the proposal being resolved without a meeting.

### How is a resolution passed?

A resolution will be passed if more than 50% in number and 50% in value (of those creditors who did vote) voted in favour of the proposal, but only so long as not more than 25% in value objected to the proposal being resolved without a meeting.

### What happens if the proposal doesn't pass?

If the proposal doesn't pass and an objection is not received, the external administrator can choose to amend the proposal and ask creditors to consider it again or the external administrator can choose to hold a meeting of creditors to consider the proposal.

The external administrator may also be able to go to Court to seek approval.

### What happens if I object to the proposal being resolved without a meeting?

If more than 25% in value of creditors responding to the proposal object to the proposal being resolved without a meeting, the proposal will not pass even if the required majority vote yes. The external administrator will also be unable to put the proposal to creditors again without a meeting.

You should be aware that if you choose to object, there will be additional costs associated with convening a meeting of creditors or the external administrator seeking the approval of the Court. This cost will normally be paid from the available assets in the external administration.

This is an important power and you should ensure that it is used appropriately.

### Where can I get more information?

The Australian Restructuring Insolvency and Turnaround Association (ARITA) provides information to assist creditors with understanding external administrations and insolvency.

This information is available from ARITA's website at [artia.com.au/creditors](http://artia.com.au/creditors).

ASIC also provides information sheets on a range of insolvency topics. These information sheets can be accessed on ASIC's website at [asic.gov.au](http://asic.gov.au) (search for "insolvency information sheets").